IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1930 of 2001
AND
SPECIAL CIVIL APPLICATION Nos. 2405, 1737 and 1739 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NIRANJANABEN CHITTRANJAN MEHTA

Versus

STATE OF GUJARAT

Appearance:
MR KS JHAVERI for Petitioners
MR VM PANCHOLI, AGP for Respondent No. 1
DS AFF.NOT FILED (R) for Respondent No. 2, 3, 4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 26/04/2001

ORAL JUDGEMENT

The petitioners retired as Lecturers in the

colleges affiliated to the different Universities in the State as per the particulars given below :-

Special Civil Applica-tion No.	Name of Petitioner age of 62 yrs.	University attaining salary not paid	Date of which	Period for
1 2	3	4	5	
1930 of 2001	Niranjanaben Chittranjan Mehta	South Gujarat	30.8.2000	September October
1737 of 2001	Maganbhai P.Patel	North Gujarat	18.6.2000	September October
1739 of 2001	Natwarlal M.Shah	North Gujarat	16.8.2000	September October
2405 of 2001	Phatehkaran H.Pawar	North Gujarat	7.7.2000	July to October

2. The controversy arising in these petitions is in a very narrow compass. The lecturers and other teaching staff are to retire on superannuation on completion of the age of 60 years which is now raised to 62 years. Earlier, they were made to retire exactly on the date of attaining the age of superannuation. By the Government Resolution dated 11.12.1990 (Annexure-A to the petition) the State Government decided that actual date of retirement should be uniform, that means, it should be at the end of the term so that academic activities are not dislocated in the middle of the term. Accordingly, such date of retirement was fixed either as 31st October in case of the employees who are to superannuate between 15th June and 30th October and 14th June in case of the employees who attain the age of superannuation between 1st November and 13th June. Thereafter, by the

Government Resolution dated 30.12.2000 (Annexure-C to the petition) the Government decided that while benefits being given by the Government Resolution dated 11.12.1990 for the actual retirement at the end of the academic term should continue, that should be subject to the following two conditions :-

(i) The period between the date of attaining the age of superannuation and end of the term shall not be treated as pensionable service and during that period no leave or increment shall be admissible.

(ii) Their salaries will be paid as per the Bombay Civil Service Rules which would mean pay minus pension.

3. The petitioners attained the age of superannuation i.e. they completed 62 years of age on the respective dates mentioned hereinabove in the middle of the term, and therefore, they were continued in service till 31.10.2000. The grievance is that in case of the petitioners in Special Civil Application Nos.1737, 1739 and 1930 of 2001, they have not been paid salaries for the months of September and October, 2000 and in case of the petitioner in Special Civil Application No.2405 of 2001, he is not paid salary for the months of July to October, 2000.

4. Mr.Vipul Pancholi, learned AGP appearing for the respondent - State of Gujarat is not in a position to explain as to why in spite of the aforesaid clear cut instructions contained in the aforesaid Government Resolutions dated 11.12.1990 and 30.12.2000 the petitioners are not paid the salaries for the aforesaid months.

5. It is true that by Government Resolution dated 30.12.2000 condition is imposed to the effect that while paying the salary for the period after completion of 62 years of age, salary should be paid on the basis of the formula contained in the BCSR i.e. pay minus pension and it is true that computation of pension may take some time, but atleast the petitioners' pay would not be less than what they were drawing immediately before completion of 62 years of age. So any delay in computation of pension need not result into delay into the payment of salary to the petitioners for the period upto 31.10.2000. All that the aforesaid conditions contained in the Government Resolution dated 30.12.2000 mean is that the services rendered by the petitioners between the date of completion of 62 years of age and the end of the term is

not to be treated as pensionable service and that the petitioners will not be paid any pension for the aforesaid period. Hence, the petitioners will be entitled to receive pension only with effect from 1.11.2000.

6. In view of the above, the concerned respondents are directed to release the salaries (if not already released) of Maganbhai P.Patel, Mr.Natwarlal M.Shah and Ms.Niranjanaben Chittranjan Mehta, petitioners in Special Civil Application Nos.1737, 1739 and 1930 of 2001 respectively for the months of September and October, 2000. The concerned respondents shall pay Mr.Phatehkaran H.Pawar, petitioner in Special Civil Application No.2405 of 2001 salary for the period from July to October, 2000, if not already paid so far.

These directions are issued with the clarification that the services rendered by the petitioners during the period between the date of completion of 62 years of age and 31.10.2000 shall not be treated as pensionable and it is also clarified that the petitioners shall be entitled to receive the pension only with effect from 1.11.2000.

The respondents shall also undertake the exercise for computation of pension and other retiral benefits payable to the petitioners as expeditiously as possible and preferably within three months from the date of receipt of the writ of this Court or a certified copy of this order, whichever is earlier.

7. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S.Shah,J)

(pathan)